

# HOUSE BILL No. 1177

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 33-39-1-8; IC 35-38-2-2.3; IC 35-50-5-3.

**Synopsis:** Restitution. Specifies the state may be considered a victim of a crime for purposes of receiving restitution for the costs incurred by the state in prosecuting the crime.

**Effective:** July 1, 2005.

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**Burton**

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January 6, 2005, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1177

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 33-39-1-8 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) ~~After June 30,~~  
3 ~~2005~~, This section does not apply to a person who:  
4 (1) holds a commercial driver's license; and  
5 (2) has been charged with an offense involving the operation of  
6 a motor vehicle in accordance with the federal Motor Carrier  
7 Safety Improvement Act of 1999 (MCSIA) (Public Law  
8 106-159.113 Stat. 1748).  
9 (b) A prosecuting attorney may withhold prosecution against an  
10 accused person if:  
11 (1) the person is charged with a misdemeanor;  
12 (2) the person agrees to conditions of a pretrial diversion program  
13 offered by the prosecuting attorney; and  
14 (3) the terms of the agreement are recorded in an instrument  
15 signed by the person and the prosecuting attorney and filed in the  
16 court in which the charge is pending.  
17 (c) An agreement under subsection (b) may include conditions that

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the person:

(1) pay to the clerk of the court an initial user's fee and monthly user's fees in the amounts specified in IC 33-37-4-1;

(2) work faithfully at a suitable employment or faithfully pursue a course of study or vocational training that will equip the person for suitable employment;

(3) undergo available medical treatment or counseling and remain in a specified facility required for that purpose;

(4) support the person's dependents and meet other family responsibilities;

(5) make restitution or reparation to the victim of the crime, **including the state**, for the:

(A) damage or injury that was sustained; **and**

(B) **costs incurred by the state in prosecuting the person;**

(6) refrain from harassing, intimidating, threatening, or having any direct or indirect contact with the victim or a witness;

(7) report to the prosecuting attorney at reasonable times;

(8) answer all reasonable inquiries by the prosecuting attorney and promptly notify the prosecuting attorney of any change in address or employment; and

(9) participate in dispute resolution either under IC 34-57-3 or a program established by the prosecuting attorney.

(d) An agreement under subsection (b)(2) may include other provisions reasonably related to the defendant's rehabilitation, if approved by the court.

(e) The prosecuting attorney shall notify the victim when prosecution is withheld under this section.

(f) All money collected by the clerk as user's fees under this section shall be deposited in the appropriate user fee fund under IC 33-37-8.

(g) If a court withholds prosecution under this section and the terms of the agreement contain conditions described in subsection (c)(6):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 2. IC 35-38-2-2.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2.3. (a) As a condition of probation, the court may require a person to do a combination of the following:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip the person for suitable employment.

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(2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(3) Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.

(4) Support the person's dependents and meet other family responsibilities.

(5) Make restitution or reparation to the victim of the crime, **including the state, for the:**

(A) damage or injury that was sustained; ~~by the victim; and~~

(B) costs incurred by the state in prosecuting the person.

When restitution or reparation is a condition of probation, the court shall fix the amount, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance.

(6) Execute a repayment agreement with the appropriate governmental entity to repay the full amount of public relief or assistance wrongfully received, and make repayments according to a repayment schedule set out in the agreement.

(7) Pay a fine authorized by IC 35-50.

(8) Refrain from possessing a firearm or other deadly weapon unless granted written permission by the court or the person's probation officer.

(9) Report to a probation officer at reasonable times as directed by the court or the probation officer.

(10) Permit the person's probation officer to visit the person at reasonable times at the person's home or elsewhere.

(11) Remain within the jurisdiction of the court, unless granted permission to leave by the court or by the person's probation officer.

(12) Answer all reasonable inquiries by the court or the person's probation officer and promptly notify the court or probation officer of any change in address or employment.

(13) Perform uncompensated work that benefits the community.

(14) Satisfy other conditions reasonably related to the person's rehabilitation.

(15) Undergo home detention under IC 35-38-2.5.

(16) Undergo a laboratory test or series of tests approved by the state department of health to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if:

(A) the person had been convicted of a sex crime listed in IC 35-38-1-7.1(e) and the crime created an epidemiologically

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demonstrated risk of transmission of the human immunodeficiency virus (HIV) as described in IC 35-38-1-7.1(b)(8); or

(B) the person had been convicted of an offense related to a controlled substance listed in IC 35-38-1-7.1(f) and the offense involved the conditions described in IC 35-38-1-7.1(b)(9)(A).

(17) Refrain from any direct or indirect contact with an individual.

(18) Execute a repayment agreement with the appropriate governmental entity or with a person for reasonable costs incurred because of the taking, detention, or return of a missing child (as defined in IC 10-13-5-4).

(19) Periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of chemical tests as specified by the court to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9). The person on probation is responsible for any charges resulting from a test and shall have the results of any test under this subdivision reported to the person's probation officer by the laboratory.

(20) If the person was confined in a penal facility, execute a reimbursement plan as directed by the court and make repayments under the plan to the authority that operates the penal facility for all or part of the costs of the person's confinement in the penal facility. The court shall fix an amount that:

(A) may not exceed an amount the person can or will be able to pay;

(B) does not harm the person's ability to reasonably be self supporting or to reasonably support any dependent of the person; and

(C) takes into consideration and gives priority to any other restitution, reparation, repayment, or fine the person is required to pay under this section.

(21) Refrain from owning, harboring, or training an animal.

(b) When a person is placed on probation, the person shall be given a written statement specifying:

(1) the conditions of probation; and

(2) that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

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(c) As a condition of probation, the court may require that the person serve a term of imprisonment in an appropriate facility at the time or intervals (consecutive or intermittent) within the period of probation the court determines.

(d) Intermittent service may be required only for a term of not more than sixty (60) days and must be served in the county or local penal facility. The intermittent term is computed on the basis of the actual days spent in confinement and shall be completed within one (1) year. A person does not earn credit time while serving an intermittent term of imprisonment under this subsection. When the court orders intermittent service, the court shall state:

- (1) the term of imprisonment;
- (2) the days or parts of days during which a person is to be confined; and
- (3) the conditions.

(e) Supervision of a person may be transferred from the court that placed the person on probation to a court of another jurisdiction, with the concurrence of both courts. Retransfers of supervision may occur in the same manner. This subsection does not apply to transfers made under IC 11-13-4 or IC 11-13-5.

(f) When a court imposes a condition of probation described in subsection (a)(17):

- (1) the clerk of the court shall comply with IC 5-2-9; and
- (2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 3. IC 35-50-5-3, AS AMENDED BY P.L.85-2004, SECTION 54, AND AS AMENDED BY P.L.98-2004, SECTION 157, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) Except as provided in subsection (i), in addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, **including the state**, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of:

- (1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);
- (2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;
- (3) the cost of medical laboratory tests to determine if the crime

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has caused the victim to contract a disease or other medical condition;

(4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; ~~and~~

(5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime; **and**

**(6) the costs incurred by the state in prosecuting the person.**

(b) A restitution order under subsection (a) or (i) is a judgment lien that:

(1) attaches to the property of the person subject to the order;

(2) may be perfected;

(3) may be enforced to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued or the person's assignee; and

(4) expires;

in the same manner as a judgment lien created in a civil proceeding.

(c) When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to:

(1) the victim services division of the Indiana criminal justice institute in an amount not exceeding:

~~(1)~~ (A) the amount of the award, if any, paid to the victim under IC 5-2-6.1; and

~~(2)~~ (B) the cost of the reimbursements, if any, for emergency services provided to the victim under IC 16-10-1.5 (before its repeal) or IC 16-21-8; *or*

(2) *a probation department that shall forward restitution or part of restitution to:*

*(A) a victim of a crime;*

*(B) a victim's estate; or*

*(C) the family of a victim who is deceased.*

The victim services division of the Indiana criminal justice institute shall deposit the restitution ~~received~~ *it receives* under this subsection in the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a) or (i), the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

(1) The name and address of the person that is to receive the

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1 restitution.

2 (2) The amount of restitution the person is to receive.

3 Upon receiving the order, the clerk shall enter and index the order in  
4 the circuit court judgment docket in the manner prescribed by  
5 ~~IC 33-17-2-3~~. IC 33-32-3-2. The clerk shall also notify the department  
6 of insurance of an order of restitution under subsection (i).

7 (e) An order of restitution under subsection (a) or (i) does not bar a  
8 civil action for:

9 (1) damages that the court did not require the person to pay to the  
10 victim under the restitution order but arise from an injury or  
11 property damage that is the basis of restitution ordered by the  
12 court; and

13 (2) other damages suffered by the victim.

14 (f) Regardless of whether restitution is required under subsection (a)  
15 as a condition of probation or other sentence, the restitution order is not  
16 discharged by the completion of any probationary period or other  
17 sentence imposed for a felony or misdemeanor.

18 (g) A restitution order under subsection (a) or (i) is not discharged  
19 by the liquidation of a person's estate by a receiver under IC 32-30-5  
20 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, IC 34-48-6, IC 34-1-12, or  
21 IC 34-2-7 before their repeal).

22 (h) The attorney general may pursue restitution ordered by the court  
23 under subsections (a) and (c) on behalf of the victim services division  
24 of the Indiana criminal justice institute established under IC 5-2-6-8.

25 (i) The court may order the person convicted of an offense under  
26 IC 35-43-9 to make restitution to the victim of the crime. The court  
27 shall base its restitution order upon a consideration of the amount of  
28 money that the convicted person converted, misappropriated, or  
29 received, or for which the convicted person conspired. The restitution  
30 order issued for a violation of IC 35-43-9 must comply with  
31 subsections (b), (d), (e), and (g), and is not discharged by the  
32 completion of any probationary period or other sentence imposed for  
33 a violation of IC 35-43-9.

34 **SECTION 4. [EFFECTIVE JULY 1, 2005] IC 33-39-1-8,**  
35 **IC 35-38-2-2.3, and IC 35-50-5-3, all as amended by this act, apply**  
36 **only to offenses committed after June 30, 2005.**

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